



**COMPLIANCE WITH AND ENFORCEMENT OF PREVAILING WAGE LAW  
REQUIREMENTS**

**From The Office Of State Auditor  
Claire McCaskill**

*The Division of Labor Standards needs to take additional steps and seek legislative changes to better enforce the state's prevailing wage law.*

**Report No. 2002-16  
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[www.auditor.state.mo.us](http://www.auditor.state.mo.us)**

**PERFORMANCE AUDIT**



Office of  
Missouri State Auditor  
Claire McCaskill

February 2002

**Significant noncompliance with state prevailing wage law shows need for effective enforcement and legislative changes**

This audit reviewed how well contractors and public entities comply with the state's prevailing wage law on public works projects. Auditors tested 35 projects and found some contractors and public entities avoid the law and underpay workers, without true consequence. Auditors also found Division of Labor Standards (division) officials, charged with monitoring law compliance, could do more to increase awareness about the law and consistently refer violators for prosecution. In addition, strengthening parts of the law would improve compliance. The following items highlight our results:

**Wage law requirements unmet**

Division staff did not receive any notification for 28 of the 35 projects tested by auditors, a basic wage law requirement. Without proper notification, state officials are less likely to determine compliance. In addition, public officials responsible for projects did not always include wage law information in calls for bids or written contracts and often did not review payroll records to assure contractors paid the correct wage. (See page 3)

**Some contractors underpaid workers**

Incorrect wages went to workers in 7 of the 35 projects tested, including underpayment by \$4 to \$6 an hour on two of these projects. In two cases, school districts hired the same contractor for their energy loan projects, but neither district could show documentation proving workers received the correct wage. Auditors and division officials determined the contractor underpaid the workers as much as \$4,200 at one district. (See page 4)

**Violating contractors not penalized**

Division officials substantiated 11 of the 20 wage law complaints tested by auditors, but only penalized contractors on eight of these complaints. In one unpenalized case, a school district solicited bids to build a gym and then rejected all bids. Later, district officials hired workers as district employees supervised by a contractor. Making the workers district employees allowed the district to avoid the wage law. Division officials found the district underpaid seven workers by more than \$46,000. (See page 4)

SHEET  
MOTEL  
YELLOW

### **Repeat violators not always prosecuted**

A debarment record, which lists contractors convicted of violating the wage law and notifies public entities not to contract with such businesses, only included four companies convicted in 1993 and 1997. Division records show during fiscal years 1998 through 2001, 16 contractors had at least 4 violations each, including a contractor with 13 violations. Division officials only referred five of these contractors for prosecution. (See page 6)

### **Penalties for violators not increased since 1957**

Insignificant fines of \$10 for each day a worker is underpaid do not deter noncompliance. Division officials told auditors many contractors consider this small penalty as just an additional business cost. The penalty has not changed since state law set it in 1957, while several other states have much higher fines. (See page 8)

### **State staff cannot pursue back wages for underpaid workers**

A 1997 Missouri Supreme Court ruling forced the state to stop suing violating contractors for back wages. As a result, workers can only collect back wages by filing their own civil lawsuits against their employer. Division officials found violations in fiscal year 2001 that totaled \$1.3 million in wages due workers, but about \$376,000 has gone uncollected. Auditors found at least six other states can sue contractors for back wages. (See page 8)

Other needed legislative changes include setting a minimum dollar threshold for projects allowing regulation efforts to focus on significant projects and requiring contractors to retain payroll records for more than a year. (See page 9)

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**Missouri State Auditor**

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and  
Members of the General Assembly  
and  
Catherine B. Leaphart, Director  
Department of Labor and Industrial Relations  
and  
Colleen Baker, Director  
Division of Labor Standards  
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The State Auditor's Office has audited compliance with the state's prevailing wage law. The purpose of the audit was to determine whether public entities and contractors are complying with the law on public works projects, and whether the Division of Labor Standards is effectively enforcing the law.

We concluded that division officials need to take additional steps and seek legislative changes to improve prevailing wage law compliance and enforcement.

The audit was conducted in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included such tests of the procedures and records as were considered appropriate under the circumstances.

Claire McCaskill  
State Auditor

October 16, 2001 (fieldwork completion date)

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## **RESULTS AND RECOMMENDATIONS**

### **1. Most Public Entities and Contractors Do Not Comply with the Prevailing Wage Law**

State prevailing wage law is often not complied with by public entities and contractors. Some of these entities or businesses are either unaware of the law, choose to ignore the law, or attempt to circumvent it. The Division of Labor Standards (division) provides information regarding the law to public entities, but can be more proactive in identifying public works projects, increasing awareness of the law's requirements, and establishing regulations regarding reporting requirements. In addition, division staff do not consistently refer violators for prosecution and debarment. Division personnel attribute budget constraints and the lack of prosecution of referred cases as the cause for not taking more aggressive action. As a result, contractors are not always penalized and continue to work on public works projects.

#### **Background information**

Sections 290.210 through 290.340, RSMo 2000, established in 1957, set the prevailing wage requirements, and the division enforces these requirements. The law applies to all public works projects. These projects include fixed works constructed for public use and funded entirely or in part by public funds. They also include work accomplished directly by any public utility company performed under the order of the Public Service Commission or other public authority. Drainage and levee district projects are not public works projects. The division's brochure and/or state law includes the following basic steps and procedures for public entities to comply with the prevailing wage law:

- Request annual wage orders from the division. The wage order lists the applicable job classifications for all workers in that locality, and establishes the hourly wage.
- Incorporate a complete copy of the most current annual wage order in all bid specifications. The public entity must also include language in the contract that the contractor and subcontractor(s) must pay at least the prevailing wage and the penalty for noncompliance.
- Submit a form that notifies the division of the project at bid time.
- Submit a list of project contractors to the division at contract award time.
- Obtain a bond from the contractor, which contains a statement that guarantees the faithful performance of the prevailing wage statement in the contract.
- Review all payroll records to ensure prevailing wage law requirements are being met during the course of the project.
- Acquire a completed affidavit of compliance form from the contractor before making final payment.

Contractors are required to:

- Pay employees prevailing wage rates.
- Post the prevailing wage information in a prominent location for public viewing during the course of the project.
- Submit certified payroll records to the public entity, which detail all employees' occupational classification, hours worked, and rate of pay.
- Submit the affidavit of compliance form to the public entity at project completion.

The division investigates complaints related to the payment of prevailing wage. Division officials routinely inspect various public works projects for prevailing wage law violations. Investigations often uncover violations that result in contractors owing wages to workers because the contractors misclassified the workers' job titles or did not pay at least the prevailing wage. Contractors must pay to the public entity a daily penalty of \$10 per worker for each instance of noncompliance.

### **Noncompliance with prevailing wage law is significant**

Auditors reviewed information and supporting documentation regarding 35 projects from public entities to determine compliance with prevailing wage law. Of the 35 projects reviewed, 28 public entities did not send the project notification form to the division as required by state law. Public entities also did not fully comply with other requirements of the law. The public entities often did not include prevailing wage information in the call for bids, the written contract, and/or the contractor's performance bond. In addition, public entity officials did not always review payroll records to determine if the contractor paid prevailing wages, or posted prevailing wage information. In some cases, public entities paid the final payment without obtaining an affidavit from the contractor. Table 1.1 shows the percent of noncompliance with the law.

**Table 1.1: Non-compliance percentage for prevailing wage law requirements**

<b>Description of Non-compliance</b>	<b>Non-compliance Percentage</b>
No statement in bond about prevailing wage	91
No statement in contract about \$10 penalty	89
No statement in contract about prevailing wage	83
Did not send project notification to the division	80
Did not check contractor's work site for posting of wage order	80
Did not review payroll records	80
No affidavit of compliance obtained before final payment	62
Did not use the applicable wage order	20
Call for bids did not include payment of prevailing wage	14
Did not keep wage records in the state for 1 year	11

Source: Records obtained from public entities and contractors on public works projects.

In two of the four energy loan projects reviewed, school districts contracted with the same out-of-state company for construction work to upgrade lighting in each district. These school districts did not maintain any documentation, including a contract, to show whether the public entity or the contractor followed the prevailing wage law. Auditors obtained employees' memos and the total amount paid for one contract from the contractor. Auditors and division wage and hour investigators determined the contractor underpaid the workers as much as \$4,200. In addition, two other school districts received energy loans and used the same contractor for projects totaling over \$176,000. These school districts also could not provide the necessary documentation to determine whether prevailing wage was paid.

### **Contractors did not pay prevailing wage**

Auditors and division investigators used 1-week's payroll records for one worker for each of the 35 projects tested. These tests showed contractors did not pay the correct wages for 7 projects (20 percent). Two of the seven contractors on two separate projects underpaid workers by \$4 to \$6 per hour. Additional noncompliance may have been discovered if payroll records for other workers on those projects had been reviewed.

Underpayments  
on 20 percent of  
projects tested

### **Enforcement of prevailing wage law could be more effective**

Our review of complaints also leads us to question the effectiveness of the enforcement of the prevailing wage law. Some public entities and contractors are either unaware of the law, choose to ignore the law, or attempt to circumvent the law. Auditors examined 20 complaints received and resolved by the division during fiscal years 2000 and 2001. The division's investigations determined nine complaints were not substantiated. Division personnel appropriately penalized public entities and contractors for eight of the complaints, but did not penalize the contractors for three complaints as shown below.

- A school district solicited bids for a domed gymnasium and rejected all bids. School district officials hired workers as school district employees and placed these workers under the direct supervision of the contractor. The workers were not paid prevailing wage because public works projects constructed by employees of public entities are not subject to the prevailing wage law. The division's investigation into this complaint revealed seven workers were underpaid a total of over \$46,000. Investigators calculated a penalty of \$3,560. The Attorney General's Office ruled that division personnel could not assess a penalty because state law requires the penalty to be remitted to the school district; however, the school district helped create the problem and was not entitled to the penalty. Since state law does not provide for the state to sue a company for back wages, the workers would have to sue the contractor.
- Two complaints concerned public entities that helped cause the violation by not including the wage order in the bid specifications. In both instances, the governing entity subsequently reimbursed the contractor for back wages, but neither had to pay a penalty for disregarding the prevailing wage law.

Officials  
circumvented  
the law

Section 290.340, RSMo 2000, provides that any public official who willfully violates and omits to comply with prevailing wage law shall be penalized for each violation with a fine not exceeding \$500, and/or by imprisonment not exceeding 6 months. This statute further provides that each day such violation or omission continues shall constitute a separate offense. Division personnel could not recall the last time they had, or if they had ever, referred information to a prosecuting attorney to file a lawsuit under this section. Division personnel further maintain that legal action seldom occurs under this statute because prosecuting attorneys are reluctant to file suit against public entity officials.

### **Projects occur without the division's knowledge**

The division receives, approximately 2,300 project notifications annually. However, as shown in Table 1.1, page 3, the division did not receive notifications for 80 percent of the projects tested. Division officials acknowledge all public works projects are not reported to the division. The division initiates investigations primarily from complaints. Division officials do not always obtain information from outside sources including construction trade publications, some state agencies, and public debt issuances; regarding the existence of potential public works projects. Funding was requested in the past for subscriptions to construction trade publications, but these requests were denied. In addition, division officials note they have a close working relationship with some state agencies, including the Missouri Department of Transportation and the Office of Administration, Division of Design and Construction and uses them as sources for identifying public works projects.

Division officials could use this information to identify pending and ongoing public works projects. A communications link with the Departments of Economic Development and Natural Resources would alert the division about projects undertaken as a result of various funding sources administered by these agencies. Once staff become aware of the existence of projects, the projects could be monitored for compliance with prevailing wage laws from the initial project notification through the final affidavit of compliance.

### **The division should increase public entity awareness of the prevailing wage law**

Division staff do not send the brochures that describe the requirements of the prevailing wage law to public entities on an annual basis. By mailing brochures to all public entities annually, public officials awareness of the law requirements could increase.

Division staff train public entity officials regarding prevailing wage law, but attendance at training sessions is often poor. The division's Internet website also offers information about the state law and code of state regulations.

State law and state regulations do not require public entities to submit the affidavit of compliance to the division showing that the contractor has complied with the requirement to pay prevailing wage. Twenty-two of the 35 projects in our audit test (62 percent) did not have affidavits before public entities made final payment to the contractor. This affidavit would be an important document because it contains a notarized statement from the contractor that he/she

Final affidavits of compliance are not submitted

paid the prevailing wage on the project. Division personnel should require this affidavit to be submitted for all public works projects.

Division personnel should also require the public entity to certify compliance before the completion of projects. These certifications should include statements declaring that the public entity:

- Received and used the correct wage order for the project.
- Ensured the contract and performance bond included the appropriate language regarding the prevailing wage law.
- Reviewed payroll records periodically during the project.
- Inspected the job site for proper posting of the prevailing wage information.

According to division personnel, the Southern District Court of Appeals ruled that the division does not have much authority to establish stringent regulations regarding public entity reporting requirements. Because of the court decision, division personnel stated they cannot require public entities to submit affidavits.

### **The debarment list has not served as an effective tool for frequent violators**

Pursuant to Section 290.330, RSMo 2000, the Secretary of State must maintain a list of contractors (debarment list) prosecuted and convicted for violating the prevailing wage law. The debarment list notifies all public entities that they are not to contract with these contractors for the construction of any public works projects for a period of 1 year from the date of the first conviction and for 3 years from the date of each subsequent violation. However, the debarment list contained only two companies convicted in 1997 and two companies convicted in 1993. According to division records, there were 16 contractors that had at least 4 violations each during fiscal years 1998 through 2001, including one contractor that had 13 violations during this time period and 5 additional violations already in fiscal year 2002. Division officials only referred five of these contractors to prosecuting attorneys for possible prosecution. As a result, contractors have repeatedly violated the prevailing wage law, and the state has not prosecuted and subsequently debarred them.

Repeat violators  
are not always  
prosecuted

According to division personnel, the division regularly requests to speak at Missouri Association of Prosecuting Attorneys' meetings and has developed and delivered a handbook to all prosecuting attorneys. However, division personnel stated less than 10 prosecutors have indicated a willingness to address prevailing wage cases. They also indicated referrals to prosecuting attorneys resulted in only an 18 percent conviction rate over the last 3 fiscal years.

### **Conclusion**

Division management has not been proactive enough to ensure compliance with the prevailing wage law. Without proper mechanisms to identify and monitor public works projects, division staff must rely on complaints to discover noncompliance.

## Recommendations

We recommend the Director, Division of Labor Standards:

- 1.1 Refer public officials who violate the prevailing wage law and contractors with a history of violations for possible prosecution.
- 1.2 Obtain information from other state agencies, public debt issuance publications, and construction trade publications to identify additional public works projects.
- 1.3 Mail prevailing wage law brochures to all public entities annually.
- 1.4 Adopt a state regulation that requires both the contractor and the public entity to submit final affidavits of compliance.

## Department of Labor and Industrial Relations Comments

- 1.1 *The Division will make these referrals regardless of comments from prosecutors about the lack of intent to pursue these cases.*
- 1.2 *The Division will explore other sources of information about public works projects immediately. However, the Division reiterates our concern that increased knowledge of projects without an increase in the current staff will not improve enforcement of the law. The division will focus on ways to more efficiently enforce the law with the limited resources it has.*
- 1.3 *We do agree additional information could be provided to all public entities, and plan to provide such. However, the Division questions whether sending automatic mailings to all public entities is a good use of resources. Many public entities go 5 or 25 years without any type of construction projects. Engineering or architect firms receive wage orders and handle compliance for many public bodies. Mailing to public bodies represented by these firms would be a waste of resources. Automatic mailings to public bodies not having requested a wage order would require mailing of incremental increases. This means an additional 10 mailings a year to each entity to provide the incremental increases to the Wage Order. The Division is concerned the proposed budget constraints may necessitate a reduction in mailing of wage orders. Entities who have not requested would be the first to be cut.*
- 1.4 *The Division does not have statutory authority to require public entities to submit an affidavit of compliance or to require them to certify compliance, to us. The Southern District Court of Appeals very clearly prohibited the Division using a regulation to require further efforts or documents from public entities when the statutory requirement only applied to the contractor. We believe these requirements would take a statutory change and we would support such a change.*

## **2. The Division Needs to Seek Statutory Changes to Enhance Enforcement**

Division management, with the support of some legislative changes, can improve compliance with the prevailing wage laws. These measures include seeking: (1) stiffer penalty provisions for violators, (2) authority to collect back wages and related interest on behalf of workers, (3) minimum dollar thresholds for public works projects, and (4) increased payroll record retention requirements. If these changes do not occur, noncompliance with the prevailing wage laws will likely continue.

### **Increased penalty provisions may improve compliance**

Penalty amounts have not been significant enough to deter noncompliance. Section 290.250, RSMo 2000, provides for penalties against contractors for \$10 for each day a worker is not paid the correct prevailing wage. The total penalty amount assessed the contractor goes to the public entity. However, the division does not refer the contractor for penalties if the public entity shared fault for the noncompliance with the prevailing wage law. In addition, according to division management many contractors feel that this small penalty amount is just an additional cost of doing business.

Penalty has not been increased since 1957

Aggressive enforcement and stiffer penalties for violations would likely result in better compliance with the state's prevailing wage law. Our review noted other states have more severe fines and penalties. The state of Washington imposes fines of not less than \$1,000 or 20 percent of the violation found. In Arkansas, a more flexible penalty ranging from a minimum of \$50 to a maximum of \$1,000 per violation can be imposed. New York's law provides for penalties, up to 25 percent of the wages and interest due. In Illinois, in addition to penalties, contractors are required to pay punitive damages to workers.

### **Other states pursue back wages and related interest on behalf of workers**

Contractors often pay workers back wages due when division staff notify them of violations that result from investigations. However, due to a 1997 Missouri Supreme Court decision, the state can no longer sue contractors on behalf of workers for recovery of back wages. As a result, workers must collect the wages due them by filing civil suits against their employers. The state has never been authorized to collect related interest charges on back wages; instead, the Attorney General can only sue contractors for penalties. The division's closed violation cases for fiscal year 2001, resulted in about \$1.3 million in wages due workers. However, contractors only paid about \$924,000, which left a difference of about \$376,000 in wages due but not collected for the workers.

Our reviews of the prevailing wage law in six other states indicated that these states can sue contractors for wages owed workers as well as enforce fines and penalties in connection with these violations. For example, New York allows for interest of up to 16 percent from the date of the underpayments to date of the restitution. Arkansas allows for a civil penalty of \$50 up to \$1,000 for each violation and not greater than 10 percent of the amount of the contract or 10

percent of the amount of unpaid wages. Washington allows for a civil penalty of \$1,000 or 20 percent of the total prevailing wage violation found on the contract, whichever is greater.

### **State law does not require a minimum dollar threshold on prevailing wage projects**

Missouri is one of 31 states that has a prevailing wage law and only 1 of 7 that has no minimum dollar threshold applying to public works projects. A minimum dollar threshold allows regulatory effort to focus on only significant public works projects. Other states' minimum thresholds range from \$1,000 to \$500,000. There are three states that have thresholds for new construction and remodeling only, and two states with thresholds for school districts and state colleges and universities only. A review of the project notifications showed Missouri had projects as low as \$100.

Table 2.1 shows the states that border Missouri, their applicability regarding prevailing wage law, and their minimum dollar threshold amounts.

**Table 2.1: Prevailing wage law for surrounding states**

State	Prevailing Wage Law	Threshold Amount
Arkansas	Yes	\$75,000
Illinois	Yes	None
Iowa	No	N/A
Kansas	No	N/A
Kentucky	Yes	\$250,000
Nebraska	Yes	None, except \$40,000 for public school districts
Oklahoma	No	N/A
Tennessee	Yes	\$50,000

Source: U.S. Department of Labor, Employment Standards Administration

Division management indicated that legislation introduced in past years to incorporate a dollar threshold has been unsuccessful. State law requires state and county governments to bid purchases greater than pre-established dollar amounts. State law does not require other governments, such as cities and schools, to bid purchases. It would be beneficial if the prevailing wage law was tied to various bidding requirements for the state's various political subdivisions, when applicable. However, a minimum dollar threshold would still need to be established for those entities that do not have bidding requirements.

### **Maintaining payroll records for more than a year would benefit complaint investigations**

Division staff do not investigate or track complaints on public works projects that have been completed for more than 1 year. State law only requires contractors to retain payroll records for 1 year after project completion. Other states require payroll records to be retained for 3 to 4 years following completion of a public works project. Compliance with prevailing wage laws could improve if records were required to be retained for longer periods of time.

## **Conclusion**

Various legislative changes would improve enforcement of the state's prevailing wage law.

## **Recommendations**

We recommend the Director, Division of Labor Standards seek legislation to:

- 2.1 Increase penalty provisions for violators.
- 2.2 Authorize the collection of back wages and related interest charges on behalf of workers.
- 2.3 Establish minimum dollar threshold amounts for public works projects.
- 2.4 Extend the period for retaining payroll records.

## **The Department of Labor and Industrial Relations Comments**

*The Division agrees with these recommendations for statutory changes. In addition, the Division has provided the Auditor's Office with fourteen other statutory changes that would result in better enforcement of Missouri's Prevailing Wage Law. The Division will work with any legislator in this, or any future legislative session to draft appropriate language to make the recommended changes.*

**OBJECTIVES, SCOPE AND METHODOLOGY**

**Objectives**

The objectives of the audit were to determine whether public bodies and contractors are complying with prevailing wage law on public works projects, and whether the Division of Labor Standards is effectively enforcing the law.

**Scope and Methodology**

Audit fieldwork began in June 2001 and continued through October 2001. The audit staff:

- Reviewed applicable state statutes, code of state regulations, division policies and procedures, and Attorney General's Opinions.
- Researched other states' laws, procedures, and reports prepared on prevailing wage laws.
- Reviewed the division's project notifications, complaint investigations, annual wage orders, and related correspondence.
- Solicited and reviewed information provided by 35 public entities regarding public works projects to determine compliance with the prevailing wage law. Specifically, we determined whether the public entity (1) requested and used the appropriate wage order, (2) filed a project notification with the division for the project, (3) submitted a contractor information notification to the division for the project, (4) ensured that the contractor prominently posted the wage order information at the work site, (5) obtained payroll records from the contractor or subcontractor(s) or examined the payroll records to determine the correct prevailing wages were paid to each worker, and (6) obtained a final affidavit from the contractor and/or subcontractor(s) before final payment indicating that it complied with the prevailing wage law.
- We determined whether (1) the call for bids included some requirement on payment of prevailing wage, (2) the contract included a requirement for the payment of prevailing wage, (3) the contract included the \$10 penalty for not paying the prevailing wage, (4) the performance bond provided by the contractor or subcontractor included a requirement for the payment of prevailing wage and the penalty for not paying the prevailing wage, and (5) the contractors or public entities kept payroll records in the state for at least one year.
- Interviewed knowledgeable personnel about the procedures used by the division to enforce the law.

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**Appendix II**

January 23, 2002

The Honorable Claire McCaskill  
Auditor of the State of Missouri  
State Capitol Building  
Jefferson City, MO 65101

JAN 24 2002  
MISSOURI

Dear Auditor McCaskill:

Missouri's Department of Labor & Industrial Relations is grateful for the assistance offered by the Office of the State Auditor in determining how to achieve higher levels of compliance with Missouri's prevailing wage law. The Division of Labor Standards (Division) recognizes that many of the changes recommended by the Auditor require legislative change. If supported by legislative sponsors, we will work to make the necessary statutory changes during this, or any future legislative session. Many of the other changes recommended by the Auditor require a reallocation of already limited resources in the Division. The Division will carefully examine all procedures to determine how to maximize its limited resources to improve enforcement of the prevailing wage law. The Division concurs in the report's finding that many public bodies do not comply with the prevailing wage law and will continue to work with public bodies to make them aware of the law and what they need to do to comply. The Division requests that this finding be specifically noted on the front page of the audit report, and in the letter to the Governor and the members of the General Assembly.

The Division has the following response to the issues addressed in the report:

**Most public entities and contractors do not comply with the prevailing wage law**

The report notes that many public bodies are not aware of the law or choose not to follow it and fail to file project notification reports. The Division has taken an active role in educating public bodies and contractors and has consistently attempted to learn of public works projects. To that end the Division requested funding for construction project reports in the 1998, 1999 and 2000 budget cycles. However, funding was not provided. After those cycles, due to budget constraints, we were advised to not submit any new decision items. In the Background Information on page 2, the report notes basic steps for compliance provided by the Division. The third bullet point states "Submit a form that notifies the division of the project at bid time." 290.262(10) RSMo states public entities must notify the department "prior to beginning any work". It does not state "at bid time".

The Division has a close working relationship with MODOT and OA Design and Construction, which encompasses the vast majority of state funded prevailing wage projects and receives regular reports of projects from them. We worked closely with the former Community Development Block Grant representative at the Department of Economic Development for many years. We are currently working with the new representative to help him understand the process and requirements of prevailing wage in Missouri. The Division is aware that there are public works projects by public bodies other than the state that are not reported to the Division. However, the Southern District Court of Appeals has held that the Division has limited authority to establish more stringent regulations or duties for public bodies unless the statute clearly authorizes it. Any further reporting requirements, such as requiring affidavits and certifications from public bodies and enforcement of those requirements require statutory changes.

We received an average of 2300 project notifications in the last three fiscal years. Based on the Audit Report's estimate that 80% of public entities are not submitting, there could be an average of 11,500 public works projects occurring in Missouri per year. The Division's 11 field investigators could not begin to inspect even the majority of these projects. An increase in the reporting of construction projects alone, without an increase in staff allocation for prevailing wage enforcement, will not increase compliance with the law. However, the Division will make all attempts to learn of public works projects and prioritize this information for investigative purposes no later than May 1, 2002.

### **The division should increase public entity awareness of the prevailing wage law.**

The Division is highly proactive in outreach. Each area investigator provides a one-on-one presentation on public body rights and responsibilities to a minimum of two public bodies each month. The Division obtains information from and provides information to public body and contractor association resources. However, we do plan to broaden our work with other public entities over the next four months as suggested in the Auditor's Report.

The division regularly conducts mass mailings to inform public bodies and contractors of the requirements of the prevailing wage law. This includes much more information than the brochure the audit report suggests be sent. However, the Division will attempt to do a mailing by March if work on the upcoming wage order allows (if not, the mailing will go in April). The mailing will go to all public entities with the brochure, a check off list of requirements, project notification and wage order request forms, a copy of this Audit's findings, and a letter explaining the purpose of the mailing. In addition, the Division has commenced work on developing Public Service Announcements to provide further public information. Listed below are examples of information provided in mass mailings. Please note where "Info Packet" is used, the following information was provided: prevailing wage law, all prevailing wage related regulations, request form, affidavit of compliance, contractor list, public body check off list, survey form and instructions.

June 1994 – Full info packet with final Annual Wage Order

June 1995 – Full info packet with final Annual Wage Order

- June 1996 – Full info packet with final Annual Wage Order 3.
- June 1997 – Full info packet with final Annual Wage Order 4.
- June 1998 – Full info packet with final Annual Wage Order 5.
- March 1999 – Full info packet with initial Annual Wage Order 6.
- November 1999 – Mailing to all Wage Order Requestors (approx. 3,000), plus Associated General Contractors of Missouri, Associated Builders and Contractors of Missouri, Builders Association of Missouri, all Building and Construction Trade Councils in Missouri requesting comments on wage survey information submission period change – included wage survey form and instructions.
- June 2000 – With final Annual Wage Order 7, letter indicating all CD's have all laws and rules on them, and that all laws, rules, and forms are on our website for all paper recipients.
- November 2000 – Notice to the same parties notified in November 1999 of change of submission period (now using calendar year) for wage survey information. Included full info packet.
- March 2001 – Included letter notifying public bodies of their responsibilities under Missouri's Prevailing Wage Law with Annual Wage Order 8. Emphasis on moving paper processes to electronic (all information is available on the web), and budget concerns precluded the full information regularly sent.

Every new Wage Order requestor received a full information packet, and a letter explaining their role and responsibilities under the law. Also, all 900+ parties receiving CD Rom Wage Orders get the laws, rules, all forms and instructions with every CD. The Division has just completed a mailing urging public bodies to switch from paper to CD version of the Wage Order. This switch will provide more entities with copies of the laws, rules and forms in every wage order mailing.

The Division is working with our Information Systems Unit and the Division of Employment Security to segregate and create mailing lists of employers with construction contractor SIC codes. We planned to use this list for a partial mailing late this winter (and others as future funds are available) advising contractors of their rights and responsibilities under the law, and their opportunity to participate in the wage survey process. However, based on the Audit Report recommendation to provide additional information to public bodies, we will allocate our resources for a mailing in March or April, 2002, to the 3500 public bodies on the list provided by the Auditor's Office. If funds are still available, we will go forward with the contractor mailing at a later date.

The Division is shifting to paperless systems, where possible, to save costs and maximize the availability of information to the public. We are one of a few states with a wage order on their website. In 1999 our staff posted over 3 million wage hours received by email from employers that year. The number of emailed hours increases each year as we continue to encourage wage survey submitters to submit by email. All laws, regulations and forms are on our website. This format makes information quickly available to any contractor or public body.

**The debarment list has not served as an effective tool for frequent violators.**

The Division has, in 1996 and again in 2001, created a "Prevailing Wage Compliance" handbook for all County Prosecutors in the state. Prior to the budget constraints of the last year, the area investigator personally delivered each handbook to the prosecutors. In all counties in 1996, and almost 100 in 2001, our investigators were able to personally encourage local prosecutors or their staff to prosecute violations of the prevailing wage law. In addition, the Division regularly requests to speak at the state Prosecutor's Association meetings. However, less than 10 county prosecutors in the state have indicated they are willing to address prevailing wage cases. The Division forwards cases to prosecutors based on the statutory designation of "willful". This is interpreted to mean very egregious or repeat violations. Prosecutors have advised us they do not consider violations discovered at the same time to be "willful". Several of the cases noted in the report not forwarded to prosecutors were violations discovered at the same time. In the last three fiscal years referrals to prosecutors have resulted in only an 18% conviction rate. While only 4 debarments have occurred in the past, there are 2 new debarments as of December 17, 2001 from a case we referred to the Cass County prosecutor during the time frame of this audit. In addition, a public body was referred to a local prosecutor in August of 2001. We are not aware of any action the prosecutor has taken. We do agree there were three cases that should have been referred regardless of what action the prosecutor may have decided to take. The report notes that contractors have repeatedly violated the law and the state has not prosecuted them. The Division does not have the authority to prosecute. The Division will continue to refer cases to local prosecutors in the hope that they will be pursued.

We assume that the reference to cases that the division did not substantiate means the cases were 'no violation found' due to lack of evidence. A failure to substantiate a complaint is not an indication that the division is not actively enforcing the law, but rather it is a finding that there was no violation of the law or a lack of evidence to prove such. While there are many public bodies and contractors who do not comply with the law, there are many contractors and public bodies that do comply.

Recommendations

- 1.1 The Division will make these referrals regardless of comments from prosecutors about the lack of intent to pursue these cases.

The Division will explore other sources of information about public works projects immediately. However, the Division reiterates our concern that increased knowledge of projects without an increase in the current staff will not improve enforcement of the law. The division will focus on ways to more efficiently enforce the law with the limited resources it has.

- 1.3 We do agree additional information could be provided to all public entities, and plan to provide such. However, the Division questions whether sending automatic mailings to all public entities is a good use of resources. Many public entities go 5 or 25 years without any type of construction projects. Engineering or

architect firms receive wage orders and handle compliance for many public bodies. Mailing to public bodies represented by these firms would be a waste of resources. Automatic mailings to public bodies not having requested a wage order would require mailing of incremental increases. This means an additional 10 mailings a year to each entity to provide the incremental increases to the Wage Order. The Division is concerned the proposed budget constraints may necessitate a reduction in mailing of wage orders. Entities who have not requested would be the first to be cut.

- 4 The Division does not have statutory authority to require public entities to submit an affidavit of compliance or to require them to certify compliance, to us. The Southern District Court of Appeals very clearly prohibited the Division using a regulation to require further efforts or documents from public entities when the statutory requirement only applied to the contractor. We believe these requirements would take a statutory change and we would support such a change.

### **The Division needs to seek statutory change to enhance enforcement**

The Division agrees that statutory changes are necessary to improve enforcement of the prevailing wage law. An increase on the penalty amount would encourage contractors and public bodies to follow the law.

The report indicates that the division does not refer the penalty against the contractor when the public body shared the fault in the noncompliance. All enforcement and collection action is done through litigation handled by the Attorney General's office. The Division refers cases to the Attorney General and decisions on how to proceed are made by that office.

The report notes \$376,000 in wages due but not collected for workers. The Division feels the report should note "due but not able to be collected for workers" since the Division's authority in this area is lacking. The Division feels we were quite successful in collecting the \$924,000 in wages owed to workers given the Division's lack of statutory authority to pursue this restitution. We are proud of our investigators' success in our efforts to assist workers. Wage collection for workers would be greatly increased with a statutory change.

### **Recommendations**

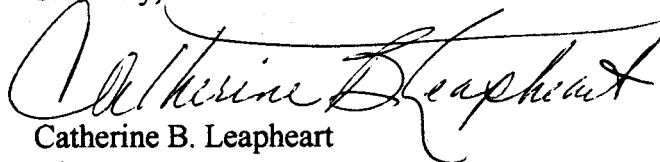
The Division agrees with these recommendations for statutory changes. In addition, the Division has provided the Auditor's Office with fourteen other statutory changes that would result in better enforcement of Missouri's Prevailing Wage Law. The Division will work with any legislator this, or any future legislative session to draft appropriate language to make the recommended changes.

### **Conclusion**

We appreciate the many suggestions provided in the report. Those recommendations within our funding and statutory limits will be implemented. For those not within our

limits, we will continue to strive to do our best with the resources we have with the goal of increasing the effectiveness of the enforcement of the prevailing wage law. We thank the Auditor's Office for its efforts in assisting us to determine where and how we can better our work processes for a more successful enforcement of Missouri's Prevailing Wage Law.

Sincerely,

A handwritten signature in black ink, reading "Catherine B. Leapheart". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Catherine B. Leapheart  
Director